IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION No. 5:10-HC-2111-D

| FRANCISCO CASTREJON-ALVAREZ, |) | |
|------------------------------|---|-------|
| Petitioner, |) | |
| v. |) | ORDER |
| WARDEN TRACY JOHNS, |) | |
| Respondent. |) | |

On June 7, 2010, Francisco Castrejon-Alvarez ("Castrejon-Alvarez" or "petitioner") filed a petition for writ of habeas corpus [D.E. 1] under 28 U.S.C. § 2241 ("section 2241") challenging his present confinement. Castrejon-Alvarez is confined at the Medium Security Federal Correctional Institution in Butner, North Carolina, pending commitment proceedings against him by the government under 18 U.S.C. § 4248 ("section 4248") in <u>United States v. Castrejon-Alvarez</u>, No. 5:08-HC-2101-D (E.D.N.C.). The section 4248 action remains pending.

On December 6, 2010, the United States Court of Appeals for the Fourth Circuit held that a person against whom a commitment action under section 4248 has been initiated must exhaust all remedies within the section 4248 action prior to seeking a writ of habeas corpus under section 2241.

Timms v. Johns, 627 F.3d 525, 533 (4th Cir. 2010). Thus, the Fourth Circuit's decision in Timms controls the disposition of Castrejon-Alvarez's petition for writ of habeas corpus.

Accordingly, the petition for writ of habeas corpus [D.E. 1] is DISMISSED WITHOUT PREJUDICE. Petitioner's motion to appoint counsel [D.E. 5], and respondent's motion to dismiss

[D.E. 6] and motion to stay proceedings [D.E. 10] are hereby DENIED AS MOOT. The clerk is DIRECTED to close the case.

SO ORDERED. This 1 day of February 2011.

JAMES C. DEVER III United States District Judge